

OLC 73-0633

22 June 1973

Ms. Karen Skrivseth  
Room 4116  
Department of Justice  
Washington, D. C. 20530

Dear Ms. Skrivseth:

This is in reply to the request by the Assistant Director for Legislative Reference, Office of Management and Budget, for our views on the Justice Department's draft of conforming amendments of the proposed Federal Criminal Code presently pending in the Senate as S. 1 and S. 1400.

In S. 1 we note an apparent oversight in that Section 303(g) extends 5 U.S.C. 8312 to an offense within the purview of 50 U.S.C. 783, while Section 374(6) repeals 50 U.S.C. 783.

Section 206(g) of S. 1400 amends 5 U.S.C. 8312 to bring a variety of offenses within its purview but does not cover 50 U.S.C. 783(b), "Communication of Classified Information by Government Officers or Employees." Since S. 1400 does not repeal 50 U.S.C. 783(b), we think it would be appropriate to extend 5 U.S.C. 8312 to offenses within its purview.

We have no other comments on provisions within this Agency's area of interest.

Sincerely,

[Redacted Signature]

John M. Maury  
Legislative Counsel

Distribution:

Original - Addressee

1 - OGC [Redacted]

✓ - Subject

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STATINTL

OLC/JGO:mmc (22 June 1973)

TRANSMITTAL SLIP		DATE 6/5/73
TO: Mr. Warner		
ROOM NO.	BUILDING	
REMARKS:		
<p>Per our conversation, the attached "Legislative Referral Memorandum" is forwarded for your review and preparation of a reply.</p> <p style="text-align: center;"><i>LO</i></p> <p>STATINTL <span style="border: 1px solid black; display: inline-block; width: 150px; height: 1.2em; vertical-align: middle;"></span> Assistant Legislative Counsel</p>		
FROM: OLC		
ROOM NO. 7D43	BUILDING Hqs.	EXTENSION <span style="border: 1px solid black; display: inline-block; width: 60px; height: 1.2em; vertical-align: middle;"></span>

FORM NO. 241  
1 FEB 55

REPLACES FORM 36-8  
WHICH MAY BE USED.

(47)

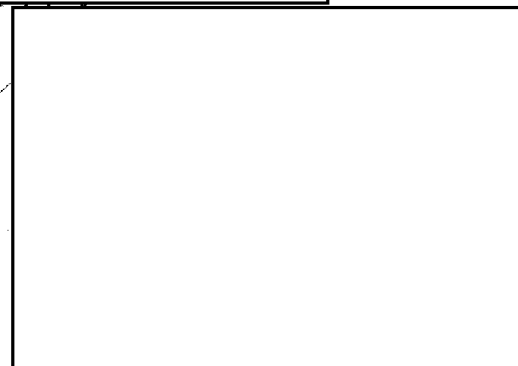
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*See page  
June 15*



ILLEGIB



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May 30, 1973

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer  
(See attached list)

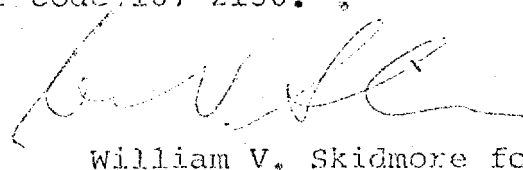
SUBJECT: Justice Department Draft: Conforming amendments  
of the proposed Federal Criminal Code presently  
pending in the Senate as S. 1 and S. 1400

The Office of Management and Budget would appreciate receiving the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with Budget Circular A-19.

The attached memorandum outlines a series of questions on which the Justice Department would like advice. Since hearings are in progress and we are hopeful that this legislation can move ahead this year, please have your comments to Ms. Karen Skrivseth, Room 4116, Department of Justice by June 22 or sooner.

We request that you send your comments directly to Ms. Skrivseth to save time. However, if you have substantive written comments, please send a copy to William Skidmore, Legislative Reference Division, Room 462-EOB.

Most agencies have already received copies of the draft bill. If you need copies, Ms. Skrivseth has a supply and will be glad to provide them at your request. Ms. Skrivseth can be reached at 739-2136 or code 187-2136.

  
William V. Skidmore for  
Assistant Director for  
Legislative Reference

Enclosure

bc

ADDRESSEES

Department of Transportation  
National Transportation Safety Board  
Department of the Treasury  
Veterans Administration  
Small Business Administration  
Department of State  
Subversive Activities Control Board  
United States Tariff Commission  
The Renegotiation Board  
Securities and Exchange Commission  
Postal Service  
Department of the Navy  
National Science Foundation  
National Mediation Board  
National Labor Relations Board  
National Aeronautics and Space Administration  
Water Resources Council  
Department of the Interior  
Interstate Commerce Commission  
Department of Labor  
General Services Administration  
Department of Health, Education and Welfare  
Department of Housing and Urban Development  
Immigration and Naturalization Service  
Federal Maritime Commission  
Federal Mediation and Conciliation Service  
Federal Power Commission  
Federal Reserve Board  
Federal Trade Commission  
General Accounting Office  
Council on Environmental Quality  
Equal Employment Opportunity Commission  
Farm Credit Administration  
Federal Communications Commission  
Federal Deposit Insurance Corporation  
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Department of Defense  
District of Columbia  
Special Action Office for Drug Abuse Prevention  
Office of Emergency Preparedness  
Environmental Protection Agency  
Cost of Living Council  
Office of Consumer Affairs  
Department of Commerce  
Civil Service Commission  
Civil Aeronautics Board

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Arms Control and Disarmament Agency  
Department of the Army  
Atomic Energy Commission  
Central Intelligence Agency  
Administrative Office of the United States Courts  
Agency for International Development  
Department of Agriculture  
Department of the Air Force

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Subject: Conforming amendments of the proposed Federal Criminal Code presently pending in the Senate as S. 1 and S. 1400.

Enclosures: (1) Outline summary of the scope of the conforming amendments in S. 1.  
(2) Outline summary of the scope of the conforming amendments in S. 1400.

As you know, presently pending before the Senate are two bills to enact a new Federal Criminal Code--S. 1 and S. 1400, the Administration's version of the revision. It is essential that the extensive conforming amendment parts of these bills be subjected to the detailed scrutiny of the agencies interested in the various areas affected.

As can be seen from enclosures (1) and (2), S. 1 more or less duplicates the scope of the conforming amendments of S. 1400; but, in addition, S. 1 proceeds to a more comprehensive conforming of non-Title 18 provisions, particularly as to culpable mental states, penalties, and repeals. It has been concluded that, time permitting, it would be desirable to process the proposed criminal code with conforming amendments at least as comprehensive as those contained in S. 1. S. 1 conforming amendments were drafted by the office of Legislative Counsel of the Senate on the basis of the recommendations contained in Volume III of the Working Papers

ENCLOSURE (1)

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Scope of the conforming amendments in S. 1:

1. Repeals sections brought from outside Title 18 into the proposed code or which are otherwise essentially duplicated by the code. Generally, higher level crimes presently outside Title 18 are brought within the proposed code.
2. Conforms present provisions with cross-references to Title 18 and other statutes to reflect the changes effected by the proposed criminal code, by the shifting of some non-Title 18 offenses into the code, by the shifting of some present Title 18 offenses into other titles, and by repeals.
3. Transfers specialized lower level crimes presently in Title 18 into other appropriate titles.
4. Conforms the penalty structure of provisions outside Title 18 to the system of the proposed code. Generally, most offenses outside Title 18 have been limited to a maximum authorized term not to exceed 1 year. In some instances, this lowers the penalty. This is the misdemeanor level of present law (18 U.S.C. 1) and is the class E felony level in S. 1.
5. No change has been made in the fine level of offenses defined outside Title 18.

criminal provisions outside Title 18. Usually, "knowingly"

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(see section 1-2A1 (a)(3), page 23) is substituted for

"willfully" or whatever other intent term is used.

Where present law has no intent requirement, none has been introduced. See, e.g., United States v. Dotterweich, 320 U.S. 217 (1943) (misbranded or adulterated drugs).

7. The conforming amendments do contain a limited number of reforming amendments based on testimony received in the hearings or staff studies. See, e.g., Vol. III, Subpart B, page 1559; 18 U.S.C. 712, as amended by Title 4 amendments, section 302(a).
8. Since S. 1 completely reorganized and re-enacted the procedural and administrative parts of present Title 18 (Parts II-V) in the process of adapting it to the proposed code, no conforming amendments, as such, were necessary in these areas. There are, however, a significant number of reform type changes to these parts of Title 18 embodied in the S. 1 re-enactment, e.g., collection of fines (3-10A4), mental incapacity (Chapter 11, subchapter C), parole commission (3-12F1).

ENCLOSURE (1)



ENCLOSURE (2)

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Scope of the conforming amendments in S. 1400:

1. Transfers specialized lower level crimes presently in Title 18 into other appropriate titles.
2. Conforms cross-references to Title 18 provisions appearing in other titles to correspond with the proposed code sections.
3. S. 1400 leaves the basic procedural and administrative parts of present Title 18 (Parts II-V) intact and makes only those minimum conforming amendments necessary to conform cross-references and to transfer miscellaneous procedural provisions from the substantive part of present Title 18 into the procedural parts.
4. Penalty structure. Rather than conform the language of each non-Title 18 offense as to penalty, S. 1400 provides a general provision for determining grading for such offenses. See S. 1400, §2002. Maximum sentence for non-Title 18 offenses is 1 year, except where a multiple offender provision provides for a higher penalty.
5. Culpability. S. 1400 elected not to apply the culpability standards of the proposed code to existing non-Title 18 offenses. See §§302-303. Therefore, no conforming amendments in S. 1400 deal with the criminal state of mind required for commission of the crime.

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Laws. Those drafts were subsequently conformed to the terminology adopted for Title I of S. 1. In an effort to minimize duplication of effort, the Department of Justice and the Senate Judiciary Subcommittee on Criminal Laws and Procedures have made arrangements to study and consider agency comments on the conforming amendments as a joint effort in consultation with the affected agency. At this point in the processing of the bills, precise and specific comments would be the most helpful.

Accordingly, in the context of your agency's area of interest, the following minimum questions need specific answers:

1. S. 1 purports to conform in the respects indicated in enclosure (1) all present non-Title 18 offenses, non-Title 18 penalty provisions, and non-Title 18 provisions with cross-references to Title 18 or other affected statutes, that are not outright repealed.

Have any such provisions in your agency's area of interest been left unconformed?

If so, list them.

2. Proofread all conforming amendments to non-Title 18 provisions in your agency's area of interest in the context of the language of the present provision

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Are there any substantive objections?

If any changes are deemed desirable, list the provision and indicate the desired change.

3. S. 1 and S. 1400 transfer from present Title 18 to other titles certain offenses as indicated in comparison tables made a part of the Congressional Record on January 12, 1973 and March 27, 1973, respectively. Have such offenses in your agency's area of interest actually been transferred?

If not, list those omitted.

4. Proofread all conforming amendments which purport to transfer present Title 18 offenses in your agency's area of interest into another title. (see comparison tables)

Are these amendments typographically and technically correct?

Are there any substantive objections?

If any changes are deemed desirable, list the provision and indicate the desired change. We are particularly interested in any suggestions you may have to change any criminal penalties to civil penalties.

5. S. 1 repeals totally or in part a number of non-Title 18 offenses as adequately covered by the proposed code or as no longer desirable.

Are such repealed offenses (or parts thereof) in your agency's area of interest either inadequately covered

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by the proposed code or desirable to retain?

If so, list them and indicate objections, if any.

6. Are the penalties established by the conforming amendments in S. 1 for non-Title 18 offenses in your agency's area of interest appropriate?

If not, list the deficient provisions and indicate why and to what extent a change should be made, again taking into consideration the possibility of civil penalties in lieu of criminal penalties.

7. S. 1 adopts the grading structure of the proposed code for application to non-Title 18 offenses, except that fine levels of present law are retained. It has been suggested that the complete grading structure of the proposed code, including fines, be applied outside Title 18 unless a different fine can specifically be justified. This would generally result in higher fines.

Is there any objection to this approach and, if so, why?

8. S. 1 conforms non-Title 18 offenses to apply the uniform criminal intent terminology of the proposed code as indicated in enclosure (1). Does this substitution significantly alter the "state of mind" requirements of any offense in your agency's area of interest?

If so, list them and indicate in what manner the alteration is desirable or undesirable.

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9. Both S. 1 and S. 1400 omit certain provisions in present Title 18 without transferring them to another title, thereby repealing them (see comparison tables).

Are there any objections to the omissions in either S. 1 or S. 1400?

If so, list the provisions and indicate the basis for objection.

10. Are there any other comments which your agency wishes to make on the conforming amendments?

Because of the schedule on which the Senate Subcommittee is working, and because of the amount of work involved in evaluating and implementing your suggestions, we must have comments by close of business June 22. Please forward comments directly to Ms. Karen Skrivseth, Room 4116, Department of Justice. If you have any questions, please call Ms. Skrivseth (739-2136; code 187-2136) at the Department of Justice.